



Idaho Ground Water Association Inc.

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DEPARTMENT OF
WATER RESOURCES

January 11, 2007

Mr. Dave Tuthill, Interim Director
Idaho Department of Water Resources
PO Box 83720
Boise ID 83720-0098

Dear Dave:

As you are aware, for the past two years, the Idaho Department of Water Resources has been engaged in Negotiated Rulemaking. During Phase One of IDWR's Rulemaking efforts, the Department's choice for sub-contractor (Rocky Mountain Environmental), endeavored to gather what they understood to be pertinent information from around the state in an effort to formulate a work plan from which to create language for new Well Construction Standards for our state.

During Phase Two (initiated this past year), Rocky Mountain Environmental, together with staff from IDWR, members of the Ground Water Industry, the Idaho Ground Water Association and other stakeholders have all been engaged in the many televised statewide meetings. We have all listened to considerable input from all members of the Committee. It was surprising to learn early on in Phase Two that the meetings were not to be consensus driven. From our perspective, these meetings have been anything but negotiated discussions. Despite the meeting's shortcomings, we have endeavored to attend and be supportive up to this point.

Consequently, IDWR's efforts have not been effective in producing any new Rule language or changes that are acceptable to the Idaho Ground Water Industry. The recorded meetings can only be characterized as a venue in which IDWR staff has presented to the Committee what they have determined to be acceptable language for stakeholder acceptance, with little or no flexibility. Minor issues have had far too much attention, resulting in a waste of valuable time, effort, and money.

IDWR staff has failed to consider practical input and has focused on issues that are of a civil nature. IDWR staff deems much of the input presented by Water Well Contractors to be flawed or suspicious, and has attempted to stereotype and discredit these Contractors and the Industry.

The Rulemaking Committee is only now beginning to discuss issues such as Well Sealing, which is the topic determined during Phase One by Rocky Mountain Environmental to be the most important. And now we have but one meeting left to complete substantive language that we might agree upon. These failures of the IDWR show the need for the Ground Water Industry to take a firm stand on this debacle, and offer another solution.

On January 10, 2007, the Idaho Ground Water Association's Board of Directors held a special meeting to discuss the status of IDWR's lack of acceptable progress with Negotiated Rulemaking. The Industry cannot possibly agree with the majority of the newly proposed draft created by IDWR staff and its sub-contractor. Therefore, it is my duty to inform you that the IGWA Board has voted unanimously to reject, in its entirety, the latest draft Rules as of January 4, 2007.

The IGWA desires updated Well Construction Rules for our state. The IGWA wishes to engage in a new Rulemaking effort in a different and more productive setting. We recognize that in order to meet certain deadlines for presentation of any new Rules to the 2008 legislature, it is important to find common ground through a common sense approach to Rulemaking that is indeed consensus driven.

We've seen firsthand how the Department of Environmental Quality conducted their Rulemaking activity in 2006, and we believe that Negotiated Rulemaking is possible. However, we must create and employ Rules that are applicable, enforceable, suitable, and as diverse as our varying statewide geology. I believe we can do this only if IDWR will allow it.

By engaging in face-to-face discussions between IDWR decision-makers, and members of the IGWA Board, at our office in Meridian, we will agree to proceed with Rulemaking for our state. We will no longer work under a non-consensus driven format. We recommend being interactive and request presenting concepts and language, based upon examples of what is actually happening in the field and deemed necessary in our effort of protecting Idaho's Ground Water Resource.

We all need to work together to find solutions. Our recommendation is to begin with our current Rules and make changes on the following list of what the Industry sees as the most important issues:

- 1) Surface Sealing**
- 2) Formation sealing**
- 3) Vertical Sealing**
- 4) Siting Requirements**
- 5) PVC Pipe**

The IGWA recommends the criteria for future meetings to include the following:

- 1) Each topic includes actual deficiencies in current applications of current Rules and Construction practices.
- 2) Each topic is achievable regarding field applications in various geologic conditions.
- 3) Each topic will protect the Resource, as current technology will allow.
- 4) Each topic should not require changes in Construction that have no actual benefit or purpose.

It is the IGWA's recommendation that IDWR present to the Idaho Ground Water Industry a plan for enforcement of these new Rules, and a financial overview of the IDWR's current capabilities for enforcement. Other topics determined to be necessary for language changes or adoption by the Committee should be discussed once all parties agree upon these 5 topics, if time allows. It is IGWA's intent that various stakeholders outside of these proceedings receive the final Draft and have opportunities for input before we proceed toward Legislative adoption.

We would like to expedite this process by holding our first Rulemaking meeting at our Meridian office on one of the following dates: January 18th, 19th, or the 22nd. If these dates do not work with IDWR's schedule, the IGWA is willing to meet with you after the IGWA Convention on February 2nd. Please let us know if these recommendations for change are acceptable, and which dates are available for you to attend.

In conclusion, we encourage IDWR to reconsider having the scheduled meeting on January 26th, 2007 for obvious reasons. Should the Department determine to continue to hold the January 26th meeting as scheduled, and our proposal for reconsideration is rejected, it is still the intent of the IGWA Board to attend that last scheduled meeting.

Sincerely



Tony Hackett
President
Idaho Ground Water Association Inc.

Cc: Jerry Rigby, Idaho Water Resource Board
Norm Semanko, Idaho Water Users Association